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## Indianapolis, Indiana

**IN THE  
COURT OF APPEALS OF INDIANA**

JERAMY HEAVRIN,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 22A01-0607-PC-286

APPEAL FROM THE FLOYD SUPERIOR COURT  
The Honorable Daniel F. Donahue, Special Judge  
Cause No. 22D01-9407-CF-88

**October 11, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Defendant Jeramy Heavrin (“Heavrin”) appeals the denial of his Motion to Correct Erroneous Sentence challenging the application of aggravators and mitigators. We affirm.

## **Issue**

Heavrin raises a single issue: whether the trial court erred in denying his motion to correct erroneous sentence.

## **Facts and Procedural History**

On January 20, 1995, a jury found Heavrin guilty of murder. The trial court subsequently sentenced Heavrin to sixty years in prison, fifty years presumptive and a ten-year enhancement.

Following his direct appeal, post-conviction proceedings, and a denial of a successive post-conviction petition, Heavrin filed a pro se motion to correct erroneous sentence, claiming the trial court applied an invalid sentencing statute and improperly considered sentencing factors. As to the second claim, Heavrin argued that the trial court improperly applied each of the seven identified sentencing aggravators and that the trial court failed to consider certain mitigating factors. After holding two hearings and reviewing the brief submitted by counsel in support of the motion, the trial court granted the motion, in part, “to [the] extent that correct presumptive sentence should have been forty (40) years,” and modified Heavrin’s sentence to fifty years, including a ten-year enhancement. Without explanation, the trial court denied the other claim of improper sentencing factors. Heavrin

now appeals.

### **Discussion**

A motion to correct erroneous sentence is based on Indiana Code Section 35-38-1-15, which provides:

If the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice is given to the convicted person. The convicted person and his counsel must be present when the corrected sentence is ordered. A motion to correct sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.

The purpose of the statute is “to provide prompt, direct access to an uncomplicated legal process for correcting the occasional erroneous or illegal sentence.” Robinson v. State, 805 N.E.2d 783, 785 (Ind. 2004) (quoting Gaddie v. State, 566 N.E.2d 535, 537 (Ind. 1991)).

When a sentencing error occurs, it is best that it be immediately discovered and corrected and addressed on direct appeal and thereafter via post-conviction relief proceedings if the claim involves consideration of matters outside the face of the judgment. Id. at 786-87. A motion to correct sentence may only be used to correct sentencing errors that are clear from the face of the judgment imposing the sentence in light of the statutory authority. Id. at 787. “Claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct sentence.” Id.

Heavrin asks us to look back to the sentencing trial court’s finding and weighing of aggravators and mitigators and determine whether the record supported the conclusion of a ten-year enhancement. As our Supreme Court announced in Robinson, a motion to correct sentence can only be used when an error is clear on the face of the judgment in light of the

statutory authority. Heavrin is asking for a review that delves beyond the face of the judgment. Without citing to any supporting authority, Heavrin claims that the partial grant of his motion to correct his erroneous sentence created a new sentencing judgment and order, subject to appeal, implying it allows review of the original sentencing court's determination of aggravators and mitigators. We find no precedent to support this contention. Based on Robinson, Heavrin's claim may not be presented by way of a motion to correct sentence. We therefore conclude that the trial court properly denied his motion.

Affirmed.

RILEY, J., and MAY, J., concur.